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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 809

ROBERT F. KLEPINGER, MIRIAM KLEPINGER, AARON W. KLEPINGER, WARREN P. KLEPINGER, AND GEORGE F. EVANSON,

Petitioners,

v.

FRED B. RHODES,

Respondent.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT.

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IN THE

Supreme Court of the United States

No.

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Petitioners,

v.

FRED B. RHODES,

Respondent.

Petition by Robert F. Klepinger, Miriam Klepinger, Aaron W. Klepinger, Warren P. Klepinger, and George F. Evanson, for a Writ of Certiorari for Review of a Judgment of the United States Court of Appeals for the District of Columbia, Entered February 11, 1944, Affirming a Judgment of the District Court of the United States for the District of Columbia, Entered June 10, 1943, Dismissing a Complaint for Enforcement of Discharge of the Obligation of an Express Trust or, in the Alternative, for Money Judgments.

To the Chief Justice of the United States and the Associate Justices of the Supreme Court:

The matter brought within the cognizance of this Court by this petition for certiorari to the United States Court of Appeals for the District of Columbia is that court's de-

cision of February 11, 1944, construing the Act of Congress of April 1, 1942, 56 Stat. 192, ch. 207, section 11-755 of the District of Columbia Code (1940 ed., supplement 2).

Said Act consolidated the Police Court of the District of Columbia and the Municipal Court of the District of Columbia by uniting the jurisdictions of both for exercise by a court created by that Act and known as the Municipal Court for the District of Columbia. It also created the Municipal Court of Appeals for the District of Columbia. Under the lower appellate court's construction of said Act, there is ascribed to the 77th Congress a purpose thereby to achieve the following objectives with respect to the system of jurisprudence obtaining in the District of Columbia:

> 1st. To invest the Municipal Court for the District of Columbia with a specified extent of equity jurisdiction.
>
> 2d. To divest the United States District Court for the District of Columbia of the same, or corresponding, extent of equity jurisdiction.
>
> 3d. To displace the United States Court of Appeals for the District of Columbia by the Municipal Court of Appeals for the District of Columbia as the court of first appellate jurisdiction over judgments or decrees entered in the exercise of such specified extent of equity jurisdiction.

Petitioners believe that in what has just been stated by them compliance is made with the Rules of this Court requiring " a summary or short statement of the matter involved." (Rule 38, par. 2.)

The text of the statutory provisions relating to the jurisdiction of the former and the present municipal courts in the District of Columbia is printed at the beginning of the accompanying brief in support of this petition.

JURISDICTION OF THIS COURT.

This Court's optional or discretional jurisdiction, by process of certiorari, is existent in virtue of Section 240 of the Judicial Code, as amended, 28 U.S.C. 347.

DIFFERING PREDICATES OF THE CONCURRING JUDGMENTS BELOW.

This case has its inception in a complaint in the aforesaid District Court for enforcement of discharge of the obligation of an express trust of the sum of $1980.00, or, in the alternative, for money judgments. It "came on to be heard at this term" of the aforesaid District Court "on the motion of the defendant to dismiss the complaint for want of jurisdiction in equity." (R. 22.) That court dismissed upon the assigned ground that "the complaint fails to state a cause for relief in the nature of equity." (R. 22.) The aforesaid Court of Appeals affirmed upon the assigned ground that the District Court was without jurisdiction either in equity or at law, saying:

> "We need not decide whether the complaint properly stated a cause of action in equity since the alleged trust amounted to only $1980.00 and the District Court, therefore, lacked jurisdiction regardless of whether the complaint would have formerly been denoted a suit at law or a bill in equity." (R. 26.)

The District Court's rationale seemed to be only that the doctrine of this Court in *Barnes* v. *Alexander*, 232 U. S. 117, upon which the petitioners have relied throughout, was inapposite. Deeming that the sole rationale, the petitioners appealed to the aforesaid Court of Appeals, bottoming the appeal upon the proposition that, inferentially, the District Court, (which filed neither an opinion nor a memorandum in explication or defense of its judgment of dismissal), "regarded dictum in *Trist* v. *Child*, 21 Wall. 441, as authoritative, in oversight of the complete disapproval thereof in *Barnes* v. *Alexander*", supra.

A summary of the allegations of the complaint is set out under the next succeeding caption of this petition.

QUESTION PRESENTED.

No other question than the one, to wit, did the United States Court of Appeals for the District of Columbia err in its construction of the aforesaid Act of Congress, consolidating the Police Court and the Municipal Court, as aforesaid, and creating the Municipal Court of Appeals for the District of Columbia, is presented on this petition. However, it is believed that it would be accordant with manifest justice to these petitioners if this Court, in the event its discretion inclines it to grant this petition and thereafter to exercise jurisdiction as plenarily as though the case were before it on appeal, to hear and determine, additionally to the question whether the lower appellate court erred in its construction of the aforesaid Act of Congress, the question whether the petitioners' complaint "fails to state a cause for relief in the nature of equity", the District Court having decided that it did not and the lower appellate court having concluded that "we need not decide" the question.

What impels to the statement by the petitioners that it would be accordant with manifest justice for this Court to decide the latter question, in the event its discretion discerns an obligation upon it to decide the former question, are these two circumstances:

> First, if this Court so decides the former as to obviate the necessity for resort by these petitioners to the Municipal Court for the District of Columbia, without deciding the latter, then the lower appellate court's judgment would be at large as to whether the petitioners' complaint stated a cause within the doctrine of *Barnes* v. *Alexander*, 232 U. S. 117, or within any other equitable doctrine; and if its judgment constrained it to conclude that it did not state a cause for

relief in equity, then, as this Court may now be assured, petitioners would again be seeking certiorari to the lower appellate court.

Second, these petitioners, in making this effort to effect a reversal of the judgment of the lower court and a concomitant disapproval not only of that Court's construction of the aforesaid Act of Congress but also of the novel rationale of its construction thereof, conceive themselves as acting not less on behalf of the public interest than in vindication of private right; for certainly it would be less expensive to them to abide such construction and such rationale and seek relief in the Municipal Court for the District of Columbia where, as the lower appellate court says, the 77th Congress intended that they should seek relief, than to incur the expense incident to this undertaking to have it finally and authoritatively declared that the 77th Congress did not so intend.

The allegations of the petitioners' complaint, therefore, are concisely stated here as follows:

1. That in the period from on or about July 1, 1938, to August 1, 1942, one of the petitioners, namely, Robert F. Klepinger, was associated in the practice of law in the District of Columbia with the respondent, under the style, to wit, Rhodes. Klepinger & Rhodes, pursuant to two written agreements of association, each of which obligated the respondent to maintain offices for the association at his individual expense. (R. 2, 13, 18.)

2. To enable him to discharge the aforesaid obligation of maintenance of offices at his individual expense, respondent, in July, 1940, obtained a loan of $500.00 from the father and uncle of the said Robert F. Klepinger, namely, the petitioners Aaron W. Klepinger and Warren P. Klepinger, respectively. The in-

ducement to the making of such loan was a written declaration of trust, executed by Messrs. Rhodes, Klepinger & Rhodes, i.e., by the respondent, by the said Robert F. Klepinger, and by the other member of the aforesaid association, Cooper B. Rhodes. Such declaration of trust was addressed to the aforesaid Aaron W. and Warren P. Klepinger. The following is quoted therefrom:

> In consideration of a loan of $500.00 evidenced by note dated July 23, 1940, given in said sum, we agree that for your protection, in the repayment of said loan, we hereby assign all our fees in the first judgments to be awarded in the U. S. Court of Claims in the cases now represented by this office and agree to consider the same as a trust fund for your benefit". (R. 4-5.)

3. That to further enable him to discharge the aforesaid obligation of maintenance of offices at his individual expense, the respondent, also in July, 1940, obtained a loan of $230.00 from the sister of the said Robert F. Klepinger, namely, Miriam Klepinger, another of the petitioners. (R. 6.)

4. That for the purpose of enabling him to promote a commercial enterprise in which he was interested, the respondent in April, 1941, obtained the sum of $900.00 from a life-long friend of the said Robert F. Klepinger, namely, George F. Evanson, another of the petitioners. That the respondent requested the said Robert F. Klepinger to assure the said George F. Evanson that repayment of such loan would be made "not later than May 1, 1941". (R. 6.)

5. That no part of any of the aforesaid several indebtednesses having been repaid in February, 1942,—and the respondent having subsequent to the date of execution of the aforesaid declaration of trust of fees, received fees which that declaration of trust obligated

him to pay to the petitioners Aaron W. Klepinger and Warren P. Klepinger, but which he diverted to other uses or purposes exclusively his own,—demand was made on the respondent for security for repayment of the aforesaid several indebtednesses. The demand was acceded to, but only after the respondent had obtained from the said Robert F. Klepinger a promise, which was subsequently fulfilled, to make a loan of $250.00 to the respondent. (R. 7-8.)

6. Compliance with the aforesaid demand was made by the execution on February 11, 1942, of an assignment by the respondent to the said Robert F. Klepinger of "the sum of $1980.00 out of the fee of $2919.19, payable to Rhodes, Klepinger & Rhodes in the case of North Pacific Emergency Export Association, No. 45190, U. S. Court of Claims (decided January 5, 1942, judgment of $11,679.97)", it being declared in such assignment as follows:

> "this assignment shall constitute and be regarded as an attorney's lien on said fee in favor of Robert F. Klepinger to insure collection and payment of the sum of $1980.00 aforesaid * * *". (R. 8-9.)

7. That after receipt of the aforesaid fee of $2919.19 by the respondent, demand upon him for payment of the aforesaid amount of $1980.00 was made by the said Robert F. Klepinger, but the respondent refused to comply therewith, although admitting (1st) that he had executed the aforesaid assignment and declared the aforesaid fee to be subject to an "attorney's lien in favor of Robert F. Klepinger to insure collection and payment of the sum of $1980.00 aforesaid", (2d) that he had in his possession as a part of such fee the sum of $1980.00 and purposed and intended to disburse it as provided in said assignment, but stated that he would retain it in his possession

until the said Robert F. Klepinger had fulfilled conditions as follows: (a) exhibited to the respondent copies of the said Klepinger's income tax returns for the calendar years 1940, 1941, and 1942, and (b) responded to numerous inquiries by the respondent concerning the business or affairs of the association of Rhodes, Klepinger & Rhodes. (R. 10-12.)

REASONS FOR GRANTING CERTIORARI.

I. Even if the equity jurisdiction of the courts of first instance in the District of Columbia were a matter of concern only to the District of Columbia populace, instead of being, as manifestly it is, a matter of very frequent concern to persons at various places in the United States and foreign nations, (especially with regard to process out of equity to Federal agencies and functionaries), nevertheless, ample reason would exist for a determination by this Court as to whether it is indeed sound judicial doctrine

(1st) that legislation of the Congress relating to the jurisdiction of courts in the District of Columbia has contributed to "the modern tendency to abolish the outmoded distinction between law and equity",

(2d) that any such legislation subsequent to the effective date of the Federal Rules of Civil Procedure is in *pari materia* with those rules, or with the statute authorizing them, and

(3d) that, therefore, when the Congress, subsequent to such date, delimits the jurisdiction of a court in the District of Columbia, even though it be a combination of a police court and a municipal court, and in delimiting creates a jurisdiction over "civil actions", it thereby implies, and implies irresistibly, an intention to clothe such court with equity jurisdiction, even though in clothing it therewith it is denuding the District Court of the United States for the District of

Columbia of a corresponding extent of equity jurisdiction.

II. A deliverance by the highest constitutional court in a Federal Judicial Circuit, (and the District of Columbia, by courtesy at least, is regarded as constituting such a circuit), to the effect that the system of jurisprudence existing in the circuit has been disrupted by the Congress under legislation

(a) that *impliedly* displaces such court by a Municipal Court of Appeals as the court of first appellate jurisdiction over specific equity causes, and

(b) that *impliedly* divests another constitutional court of a specific extent of original equity jurisdiction and vests therewith a municipal court,

constitutes a matter of profound concern and importance throughout the circuit; *a fortiori* when the deliverance is made more than a year and seven months after enactment of the legislation and is startling to judges and lawyers everywhere in the circuit because of their conviction that there is no basis whatever either in the text of the legislation or in its history for an ascription to the Congress of an *implied* intent to work such a revolutionary innovation in the circuit's system of jurisprudence.

III. When a court in the system of constitutional courts of the United States, of as high rank therein as the United States Court of Appeals for the District of Columbia, either refuses to observe and follow, or exhibits a clear misunderstanding of, established English and American judicial doctrine in the matter of construction of statutes that expressly affect the jurisdiction at law of existing courts, but do not expressly affect the jurisdiction in equity of such courts,

with the result that the said Court of Appeals decides that it has been ousted by the Congress of a specific extent

of first appellate jurisdiction, and that a District Court of the United States has been ousted by the Congress of a specific extent of original equity jurisdiction,

although the Act of the Congress which the said Court of Appeals asserts has effected the ouster does not by express words, or by irresistible implication, constitute such an ouster,

then, and indeed, there exist "special and important reasons", and other of the considerations mentioned in Rule 38, par. 5, of this Court, that justify, if they do not require, certiorari from this Court to the said Court of Appeals.

IV. Since it is plain that the lower appellate court's construction of the aforesaid Act of Congress was wholly induced by two assumptions, to wit, (a) that legislation relating to the jurisdiction of those courts which it is competent to ordain or establish has given momentum to "the modern tendency to abolish the outmoded distinction between law and equity", and (b) that either the Federal Rules of Civil Procedure, or the statute authorizing them, are in *pari materia* with the aforesaid Act of Congress, it seems highly and immediately desirable that this Court examine those assumptions and explicitly conclude whether they are supportable and valid. Its explicit conclusions thereon might be effective to dispel delusions or illusions by one or the other of the two schools of thought on the indubitable constitutional and Congressional recognition of the distinctiveness of law and equity in Federal jurisprudence.

Respectfully submitted,

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